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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
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8 JUAN M. ALCARAZ,

9 *Petitioner,*

10 vs.

11 BRIAN WILLIAMS, *et al.*,

12 *Respondents.*
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Case No. 2:13-cv-00818-JCM-PAL

ORDER

15 This habeas matter under 28 U.S.C. § 2254 comes before the court on petitioner's
16 motion (ECF No. 32) to amend/correct the district record for purposes of appeal and further
17 for entry of a scheduling order following upon the remand by the court of appeals.

18 The motion to amend the record will be granted *nunc pro tunc* in connection with the
19 concluded appeal. With respect to respondents' objection to exhibit C, while the e-mail is
20 post-judgment, the content of the e-mail pertains to department records of petitioner's
21 institutional movement history at times relevant to the timeliness issue.

22 IT THEREFORE IS ORDERED that petitioner's motion (ECF No. 32) to amend/correct
23 the district record for purposes of appeal is GRANTED *nunc pro tunc*.

24 IT FURTHER IS ORDERED that petitioner shall have until up to and including **one**
25 **hundred twenty (120) days** from entry of this order within which to file an amended petition
26 and/or seek other appropriate relief. Neither the foregoing deadline nor any extension thereof
27 signifies or will signify any implied finding as to the expiration of the federal limitation period
28 and/or of a basis for tolling during the time period established.

1 IT FURTHER IS ORDERED that respondents shall file a response to the amended
2 petition, including potentially by motion to dismiss, within **sixty (60) days** of service of the
3 amended petition, with any requests for relief by petitioner by motion otherwise being subject
4 to the normal briefing schedule under the local rules. Any response filed shall comply with
5 the remaining provisions below, which are entered pursuant to Habeas Rule 4.

6 IT FURTHER IS ORDERED that any procedural defenses raised by respondents to
7 the counseled amended petition shall be raised together in a single consolidated motion to
8 dismiss. In other words, the court does not wish to address any procedural defenses raised
9 herein either in *seriatum* fashion in multiple successive motions to dismiss or embedded in
10 the answer. Procedural defenses omitted from such motion to dismiss will be subject to
11 potential waiver. Respondents shall not file a response in this case that consolidates their
12 procedural defenses, if any, with their response on the merits, except pursuant to 28 U.S.C.
13 § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents do seek
14 dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within the single
15 motion to dismiss not in the answer; and (b) they shall specifically direct their argument to the
16 standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614,
17 623-24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion, shall be
18 included with the merits in an answer. All procedural defenses, including exhaustion, instead
19 must be raised by motion to dismiss.

20 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents shall
21 specifically cite to and address the applicable state court written decision and state court
22 record materials, if any, regarding each claim within the response as to that claim.

23 IT FURTHER IS ORDERED petitioner shall have **thirty (30) days** from service of the
24 answer, motion to dismiss, or other response to file a reply or opposition, with any other
25 requests for relief by respondents by motion otherwise being subject to the normal briefing
26 schedule under the local rules.

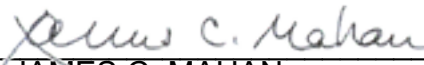
27 IT FURTHER IS ORDERED that any state court record and related exhibits filed herein
28 by either petitioner or respondents shall be filed with a separate index of exhibits identifying

1 the exhibits by number. The CM/ECF attachments that are filed further shall be identified by
2 the number or numbers of the exhibits in the attachment. If the exhibits filed will span more
3 than one ECF Number in the record, the first document under each successive ECF Number
4 shall be either another copy of the index, a volume cover page, or some other document
5 serving as a filler, so that each exhibit under the ECF Number thereafter will be listed under
6 an attachment number (*i.e.*, attachment 1, 2, etc.).

7 IT FURTHER IS ORDERED that the hard copy of any exhibits filed by either counsel
8 shall be delivered – for this case – to the Reno clerk's office.

9 The court otherwise waives compliance with local rule LR IA 10-3(e) with regard to the
10 exhibits.

11 DATED: December 27, 2016.

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14 JAMES C. MAHAN
15 United States District Judge
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